

REMARKS/ARGUMENTS

The Applicant has reviewed and considered the final Office Action mailed on November 16, 2007, and the references cited therewith. Claims 1, 2, 4, 5, and 7 are currently pending in the application. Claims 1 and 5 are amended. Support for the claim amendments can be found in the claims as originally filed. Reconsideration and allowance of the claims are respectfully requested in view of the following remarks.

Examiner Interview Summary

Applicant thanks Examiner Tatyana Zalukaeva for the interview held on June 3, 2008 between the Applicant's representatives and Examiner Tatyana Zalukaeva. The Examiner found that the cited reference U.S. Patent 6,071,267 (hereinafter "Zamierowski") qualifies as prior art only under 35 U.S.C. 102(e), and an agreement was reached that the reference may be overcome upon a proper statement from Applicant that Zamierowski and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. No other agreement was reached.

Claim Rejections - 35 U.S.C. § 103

The Examiner rejects claims 1, 2, 4, 5, and 7 under 35 U.S.C. § 103 as being obvious over Zamierowski in view of U.S. Patent 5,344,455 (hereinafter "Keogh"). This rejection is respectfully traversed on the ground that Zamierowski cannot be used as prior art in a 35 U.S.C. § 103 rejection, for purposes of this application, due to the common ownership exception provided under 35 U.S.C. § 103(c). This statute provides that:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title [35 U.S.C. § 102], shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Zamierowski may only constitute prior art only under 35 U.S.C. 102(e) Applicants submit with this response a Declaration of Common Ownership by Robert W. Mason of Kinetic Concepts, Inc. ("KCI") affirmatively stating that Zamierowski and the claimed invention were, at the time the claimed invention was made, owned by KCI or subject to an obligation of assignment to KCI.

Therefore, Zamierowski does not preclude patentability of any claims in this application under 35 U.S.C. § 103. Accordingly, Applicant respectfully requests that the rejection of claims 1, 2, 4, 5, and 7 under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

If a Petition for Extension of Time under 37 C.F.R. 1.136(a) is required, the petition is herewith made. The Commissioner is authorized to charge any fees that may be required, or credit any overpayment made with this Office Action, to Deposit Account Number 19-3140.

In light of all the foregoing, believing that all things raised in the Office Action have been addressed, Applicant respectfully requests reconsideration of the prior rejections, as well as allowance of the claims and passage of the application to issue. If the Examiner would care to discuss any remaining matters by phone, Applicant invites the Examiner to contact the undersigned at 214.259.0907.

Respectfully submitted,


Robert C. Hilton
Reg. No.: 47,649

Date: 7/28/08

For Applicants:
Kinetic Concepts, Inc.
Legal Department – Intellectual Property
P.O. Box 659508
San Antonio, Texas 78265-9508
Telephone: 210.255.6855
Facsimile: 210.255.6969